

CLERK'S COPY.

TRANSCRIPT OF RECORD


Supreme Court of the United States

OCTOBER TERM, 1947

No. 215

IN RE WILLIAM OLIVER, PETITIONER

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF MICHIGAN**



PETITIONS FOR CERTIORARI FILED JULY 17, 1947.

CERTIORARI GRANTED OCTOBER 13, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 215

IN RE WILLIAM OLIVER, PETITIONER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF MICHIGAN

INDEX

	Page
Proceedings in Supreme Court of Michigan	1
Petition for writ of habeas corpus and ancillary writ of certiorari and order for issuance of same	2
Affidavit of William F. Dohany	6
Affidavit of William Oliver	7
Answer to petition for writ of habeas corpus	8
Exhibit "A"—Judgment and sentence of Circuit Judge	15
Motion for order re full transcript of testimony	17
Affidavit of William Oliver	17
Answer of respondent to motion for full transcript of testimony	18
Order denying motion	19
Docket entries	20
Order of submission	21
Opinion, Carr, C. J.	22
Opinion, North, J.	28
Order dismissing writs	32
Clerk's certificate	33
Order allowing certiorari	34

STATE OF MICHIGAN

SUPREME COURT

Petition for Writ of Habeas Corpus and Ancillary
Writ of Certiorari

In re: Petition of WILLIAM F. DOHANY }
for a Writ of Habeas Corpus and Certio- } No. 43,539.
rari on behalf of William Oliver. }

RECORD

WILLIAM F. DOHANY,
351½ North Saginaw Street,
Pontiac, Michigan,
Attorney for Petitioner.

EUGENE F. BLACK,
Attorney General of Michigan,
EDWARD J. FALLON,
Special Assistant Attorney General,
Attorneys for Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

To the Supreme Court for the State of Michigan:

Your petitioner, William F. Dohany, of the City of Pontiac, Oakland County, Michigan, respectfully shows unto this Honorable Court as follows:

1. That he is an attorney and as such is acting for William Oliver and makes this petition for his release. Further that he has knowledge of the matters and facts set forth in this petition.

2. That the said William Oliver is now confined by the Sheriff of Oakland County, Edward K. Thomas, in the Oakland County Jail at Pontiac, Michigan.

3. That to the best knowledge of your petitioner the said William Oliver is not committed or detained by virtue of any process judgment, decree of execution specified in Sec. 80 of Chap. 37 of Judicature Act of 1915 and all amendments thereto.

4. That to the best of your petitioner's knowledge William Oliver was summoned as a witness before Judge George B. Hartrick claimed to act as a one man grand jury, so-called, pursuant to Sections 28943-6, Michigan Statutes Annotated, and did appear as such witness before him on the 11th day of September, 1946, and was thereupon enjoined into disclosing any of the proceedings of said grand jury. That after testifying before said grand jury the said Circuit Judge announced that he was finding William Oliver guilty of contempt of court and sentenced him to 60 days confinement in the Oakland County Jail, and thereupon said William Oliver was taken into custody by said sheriff and has

ever since been detained to his liberty by said sheriff. That he is informed and believes that up until the 14th day of September 1946, no order of any kind had been signed by said Circuit Judge adjudging William Oliver guilty of contempt or sentencing him for contempt of court. That said William Oliver while appearing before said Judge Hartrick acting as such grand jury made truthful answers to all questions put to him and did not seek to avoid disclosing to said grand jury any information sought to be elicited from him and was not in fact guilty of any statement or conduct which could be properly and legally construed to be contempt of court and William Oliver has been advised by William F. Dohany, his counsel, that his detention and imprisonment was illegal. Further said William F. Dohany has not been allowed to confer with said William Oliver, and the illegality therefore consists in this, to-wit:

(a) William Oliver was not in fact guilty of contempt of said court.

(b) That no facts were exhibited in William Oliver's conduct as a witness before Judge Hartrick which could properly be a basis of an order adjudging William Oliver guilty of contempt.

(c) That no order adjudging William Oliver guilty of contempt was signed upon the day said William Oliver was taken into custody by said sheriff, nor has any commitment been signed to the date of filing this Writ by the committing magistrate in so far as your petitioner, William F. Dohany, has been able to determine.

(d) That the said William Oliver was denied the benefit of counsel.

(e) That the said William Oliver is not confined by virtue of any legal commitment directed to the sheriff as required by law.

Wherefore, your petitioner prays:

That a Writ of Habeas Corpus may be issued to inquire into the cause of William Oliver's said imprisonment and detention and that said William Oliver may be relieved therefrom, and that ancillary Writ of Certiorari be directed to Honorable George B. Hartrick, judge of the Circuit Court for the County of Oakland, and that an order for bail be entered pending the detention of this petition.

William F. Dohany,
Petitioner.

William F. Dohany,
Attorney.

State of Michigan,
County of Oakland—ss.

On this 14th day of September, A. D. 1946, personally appeared before me the above named William F. Dohany and made oath that he has read the above petition by him subscribed and that he knows the contents thereof and that the same are true of his own knowledge except as to those matters he states to be on his information and belief, and as to those matters he believes them to be true.

William F. Dohany,
Petitioner.

Subscribed and sworn to before me this 14th day of September, A. D. 1946.

Gloria M. Amantea,
Notary Public, Oakland County, Michigan.
My commission expires January 23, 1948.

Upon the filing of the within petition let the Writ of Habeas Corpus issue as prayed for with an ancillary Writ of Certiorari.

Neil E. Reid,
Justice of Supreme Court.

Dated: September 14, 1946.

State of Michigan,
County of Oakland—ss.

William F. Dohany being duly sworn deposes and says:

That he is the attorney for William Oliver and that he was requested to inquire into the detention of William Oliver confined to the Oakland County Jail on the 11th day of September, 1946.

That your affiant has been refused permission to talk to the said prisoner by order of the Sheriff and the Judges of the Oakland County Circuit Court.

That your affiant has made diligent search and inquiry as to the cause of confinement of said William Oliver but has been unable to find any legal record of said commitment.

William F. Dohany.

Subscribed and sworn to before me this 14th day of September, A. D., 1946.

Gloria M. Amantea,
Notary Public, Oakland County, Michigan.
My commission expires January 23, 1948.

State of Michigan,
County of Oakland—ss.

William Oliver being duly sworn deposes and says that on the 11th day of September, A. D. 1946, he was subpoenaed to testify before the Oakland County One Man Grand Jury conducted by Honorable George B. Hartrick, Circuit Judge, to give information on certain matters of a criminal nature arising in said County.

That the said William Oliver did give full, true and correct answers to all questions asked him and within his knowledge; that at no time did he give false, untrue or evasive answers to any questions put to him by the Prosecutor or the Presiding Magistrate; that for reasons unknown to the affiant the said Honorable George B. Hartrick did then and there accuse him of giving false and evasive answers and did forthwith sentence him to be confined in the Oakland County Jail for Contempt of Court.

Further deponent sayeth not.

William Oliver.

Subscribed and sworn to before me, a Notary Public, in and for the County of Oakland, this 13th day of September, A. D., 1946.

Edward K. Thomas,
Notary Public, Oakland County, Michigan.
My commission expires

ANSWER

To the Honorable Supreme Court of the State of Michigan:

In obedience to an Order issued in the above entitled cause on the 19th day of September, 1946, I, the undersigned, do hereby certify and return as follows:

I.

That I am a Circuit Judge in and for the County of Oakland and State of Michigan, and that as such I have been duly assigned to conduct in the said County of Oakland an investigation in accordance with the provisions of 28.943 to 28.946 of the Michigan Statutes Annotated, concerning certain violations in the said County of Oakland such as gambling, operation of gambling devices, bribery of public officers and other crimes enumerated in a petition heretofore filed in the said County of Oakland.

II.

That the undersigned entered upon such investigation as a One Man Grand Jury with Honorable Frank L. Doty and Honorable H. Russel Holland, acting in an advisory capacity by virtue of Section 27.188 of the Michigan Statutes Annotated.

III.

That in the course of my investigation, it was called to my attention that the Petitioner, William D. Oliver was the owner of certain pin ball machines which he operated throughout the County of Oakland and which

machines were suspected as having been used for gambling purposes.

IV.

Attention of the undersigned was further called to the fact that one C. A. Mitchell was registered in the said County of Oakland under the assumed name of "Midwest Bonding Company" and that under his assumed name the said C. A. Mitchell had sold to the said William D. Oliver a series of instruments designated as "bonds" and that the said C. A. Mitchell had taken from the said William D. Oliver certain sums of money for the the said bonds.

V.

That the said William D. Oliver was subpoenaed as a witness before the said Grand Jury and questioned as to the present status and location of the said bonds.

VI.

That the said William D. Oliver gave false and evasive answers concerning the status of the whereabouts of the said bonds as follows:

(a) That the said William D. Oliver testified that he had destroyed the said bonds.

(b) That the said William D. Oliver gave false and evasive answers as to the method employed by him in destroying said bonds.

(c) That the said William D. Oliver impeded the progress of the Grand Jury by refusing to give information which would enable the Grand Jury to discover said bonds.

VII.

That the Grand Jury, after investigation, is satisfied that the bonds sold by the said Carman A. Mitchell to the said William D. Oliver are the same as those sold by the said Carman A. Mitchell to Leo Thomas Hartley (No. 43,540).

VIII.

The undersigned further returns and shows that almost immediately upon the recess of the Grand Jury hearing on September 11, 1946, he was stricken ill and removed to a hospital before there was ample time to prepare an order of adjudication and that such order of adjudication was signed and entered on the 14th day of September 1946 and that a copy thereof is hereto attached and marked Exhibit "A."

IX.

That the testimony given by the Petitioner and which the Grand Jury has concluded is false and evasive, is as follows:

“ . . .

Q. Now, in September of 1944 you were approached by a man named Carman A. or Carman E. Mitchell with reference to the purchase of certain bonds which were to cover pin ball machines that were owned and operated by you in the County of Oakland, that is right?

A. Yes.

Q. Where are those bonds now?

A. Well, I destroyed them.

Q. When?

A. Well, I don't remember the exact date. I imagine I destroyed it at the end of the year. You

know, when going through my papers I didn't see any use for keeping them because they had expired.

Q. What method did you use to destroy them?

A. Well, I don't know offhand just what I did do with them, whether I burned them or threw them out. I must have threw them out.

Q. Did you ever buy any bonds of that kind before?

A. No.

Q. Never had any of that kind of bonds in your possession before in your lifetime?

A. No, I never did.

Q. You never had an event of that kind occur in all your life did you?

A. No.

Q. And you want us now to understand, even in view of the fact that those were the only bonds of this type that you ever owned or handled, you want us to believe that you cannot tell us now what method you employed in destroying them?

A. I just got rid of them. I imagine I threw them into the waste paper basket. That is what I usually do. I get lots of circulations, papers, things that I have no use whatever for, threw them in the waste paper basket.

Q. When do you think you threw them away?

A. Possibly the end of the year, found them in there, run out, expired.

Q. The closest thing to accuracy that you can give us regarding those bonds, is that you are not such when you destroyed them, are not sure what method you employed to destroy them?

A. The only—I couldn't say what I did do. Probably threw them in the trash can.

Q. That is as close as you can tell us?

A. No, no, I don't remember what I did do with them. I can't say positive what I did do with them.

Q. Where were you when C. A. Mitchell first talked to you about the purchase of these bonds?

A. Well, to the best of my memory I was in his office.

Q. Who mentioned these bonds first, you or he?

A. He did.

Q. What did he tell you about them?

A. Oh, he just handed me one, told me to look it over.

Q. Did you look it over?

A. Yes.

Q. Did you read it?

A. Yes.

Q. What next was said?

A. Well, he went ahead to explain to me about the bonds, you know, what it was for.

Q. What did he tell you it was for?

A. To reimburse the county for any expense, extra expense they had to go to in case the machines, anybody was caught gambling on the machines or anything illegal.

Q. Your machines are perfectly legal, are they not?

A. They were, yes.

Q. Did he tell you who he was going to prevent from using that gambling device?

A. He didn't tell.

Q. Didn't you ask? You know, according to the ruling they can be gambled on?

Q. You know people go in and bet on high scores things like that.

Q. Did Mitchell mention that to you before you bought them?

A. Well, he stressed upon if the county had to go to any expense, extra expense, the bonding company would pay the expense.

Q. Did you consult the prosecuting attorney about it?

A. No, I didn't.

Q. You knew the county was involved, did you not?

A. Well, yes.

Q. Didn't you think it was any of the county's business that some stranger was making a contract for the county?

A. No, I didn't think anything special about it.

.

Q. Did you have any conversation with anybody else about these bonds before you bought them?

A. Yes, I spoke to McNamara about it.

Q. McNamara is now dead is he not?

A. Yes.

Q. Who else?

A. I spoke to Hartley about it.

Q. What conversation did you have with Hartley?

A. Well, I asked him what he thought about it. He said, well, he didn't know. He said McNamara had an attorney and was going to see the prosecutor about them. He said he was going to wait and see what information he got before he did anything.

Q. You went to Hartley and asked him what he thought?

A. I went to him or called him up, I don't know which. Anyway I discussed it.

.

Q. What protection did you think you were getting out of this transaction?

A. Well, you know, they just hand down a ruling that the machines in some places are illegal, if they caught them gambling on them, things like that. I figured it would show our good faith, we were trying to run them legitimately.

Q. How did you think C. A. Mitchell could enforce the law as far as your machines were concerned?

A. I don't know. He didn't say 'Enforce the law, show our good faith.' We had a little sticker we put on the machines.

.

Q. You didn't seek any advice from Mr. Dohany before you parted with your money, or in relation to these bonds, did you?

A. No.

.

Q. Because the story doesn't, if you want it put in language you understand, doesn't jell and we believe that, I think we all believe, that I believe that, and Judge Holland here, he is my associate, although I am technically the Grand Juror, we more or less like to have in cases of this kind, at least the advice of other reasonable persons to see whether or not we are jumping at wild conclusions, I don't think any one person who reads your testimony, reads this record, could believe this story. I don't believe my associates do, do you Judge Holland?

Judge Holland: No.

Judge Hartrick: Do you, Judge Doty?

Judge Doty: No.

.

IX.

By way of further return, it is denied that the petitioner was illegally confined or that he was confined without due process, and further answering, it is urged that the petitioner's adjudication of contempt is justified by his testimony and that his adjudication of contempt should not be vacated.

Respectfully submitted,

George B. Hartrick,
Circuit Judge.

A true copy

Lynn D. Allen, County Clerk,
By Arthur P. McKenna, Deputy.
Edward J. Fallon,
Special Assistant Attorney General.

JUDGMENT AND SENTENCE

To the Sheriff in and for the County of Oakland and
To the keeper of the County Jail in and for said County:

Oakland County—ss.

Whereas, William Oliver has, on the 11th day of September A. D. 1946, been convicted before me, Honorable George B. Hartrick, a Judge of the Circuit Court for the County of Oakland, now sitting as a One-Man Grand Jury in the above entitled cause, of contempt of Court, in that on the 11th day of September, 1946, the said William Oliver appeared before me as a witness in the above entitled cause to give testimony in said cause relating to material matters being inquired into in said cause by this Court:

The said William Oliver then and there answered questions propounded to him by this Court evasively, and repeatedly gave contradictory answers to the same questions concerning matters material to the inquiry being conducted by said Court, he, the said William Oliver, being then and there under oath to tell the truth, the whole truth, and nothing but the truth, before this Court upon any and all matters material to this inquiry;

Therefore, I do hereby adjudge and determine that the said William Oliver is guilty of contempt of Court; and I do further adjudge and determine that he, the said William Oliver shall be confined in the County Jail in the City of Pontiac, County of Oakland, State of Michigan, for a period of sixty (60) days or until such time as he, the said William Oliver shall appear and answer the questions heretofore propounded to him by this Court, which questions, in the opinion of the Court, are material to this inquiry, unless he shall sooner be discharged according to law.

Given under my hand and the seal of the Circuit Court for Oakland County, at the City of Pontiac this 14th day of September A. D., 1946.

George B. Hartrick.

MOTION

Now comes Petitioner in the above entitled matter and moves that an order be entered requiring the respondent to return to this court the full testimony given by petitioner before said judge for the reason that said testimony will disclose that deponent freely and promptly admitted the purchase of the bond referred to in respondent's return and identified a duplicate of said bond submitted to him by said respondent; and it will thereupon appear from said complete return that deponent could have no purpose in failing to produce said bond before said judge, if same were in existence, or in falsifying as to the circumstances of its disposal.

Wm. F. Dohany,
Attorney for Petitioner.

AFFIDAVIT SUPPORTING MOTION

State of Michigan,
County of Oakland—ss.

William Oliver of Pontiac, Oakland County, Michigan, being duly sworn, deposes and says that he testified before the Honorable George B. Hartrick, acting as a so-called one man grand jury, on April 3, 1946, and September 11, 1946; that in the course of said testimony a duplicate of the bond purchased ~~from~~ ^{by} him ~~by~~ ^{from} C. A. Mitchell, was exhibited to and identified by him as such; that deponent freely admitted the purchase of said bond and could have no purpose in failing to produce said bond before said judge, if same were in existence.

William Oliver.

Subscribed and sworn to before me, this 15th day of
October, A. D. 1946.

Gloria M. Amantea,
Notary Public, Oakland County, Michigan.
My commission expires January 23, 1948.

ANSWER OF RESPONDENT TO MOTION

I, the undersigned Circuit Judge, sitting as a one man
Grand Juror in the above entitled cause, hereby cer-
tify and return as follows:

I.

That my original answer contains all of the Grand
Jury testimony necessary to the present proceeding.

II.

That to reveal all the testimony of the Petitioner
would result in the disclosure of Grand Jury testimony
not pertinent to the present proceeding and pertinent
to past and future activities of the Grand Jury relative
to other matters.

III.

That in the opinion of the undersigned the full dis-
closure of Petitioner's testimony would seriously re-
tard Grand Jury activities.

George B. Hartrick,
Circuit Judge.

A true copy

Lynn D. Allen, County Clerk, 2

By Deputy.

Dated: October 17th, 1946.

SUPREME COURT ORDER DENYING MOTION

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the third day of December, in the year of our Lord one thousand nine hundred and forty-six.

Present the Honorable Henry M. Butzel, Chief Justice, Leland W. Carr, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

In this cause a motion is filed by petitioner for a further return to the writ of certiorari heretofore issued herein, and a brief in opposition thereto having been filed, and due consideration thereof having been had by the Court, It is ordered that the motion be and the same is hereby denied.

It is further ordered by the Court, sua sponte, that the cause be set down for hearing as a motion on Tuesday, January 7, 1947, counsel be allowed oral argument if desired.

State of Michigan—ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 4th day of December, in the year of our Lord one thousand nine hundred and forty-six.

Jay Mertz,
Clerk.



[fol. 20]

43539

Parties:

In the Matter of WILLIAM OLIVER

Plaintiff's Attorney: William F. Dohany.

Defendant's Attorney: Edward J. Fallon.

HABEAS CORPUS. CERTIORARI TO OAKLAND

Date

Proceedings

1946

Sept. 16. Petition filed.

Sept. 16. Writ of habeas corpus allowed.

Sept. 16. Writ of habeas corpus issued returnable October 7, 1946.

Sept. 19. Proof of service of writ of habeas corpus filed.

Sept. 19. Writ of certiorari issued returnable October 7, 1946.

Sept. 27. Proof of notice of writ filed.

Oct. 5. Stipulation extending return day to October 21, 1946, filed.

Oct. 11. Answer filed.

Oct. 17. Motion for further return filed.

Oct. 18. Brief in opposition filed.

Dec. 3. Motion denied, cause set for hearing January 7,

1947,

1947

Jan. 7. Submitted on briefs.

May 16. Writs dismissed.

[fol. 21] At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the third day of December, in the year of our Lord one thousand nine hundred and forty-six.

Present the Honorable Henry M. Butzel, Chief Justice, Leland W. Carr, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

43539

In the Matter of WILLIAM OLIVER

In this cause a motion is filed by petitioner for a further return to the writ of certiorari heretofore issued herein, and a brief in opposition thereto having been filed, and due consideration thereof having been had by the Court, It is ordered that the motion be and the same is hereby denied. It is further ordered by the Court, sua sponte, that the cause be set down for hearing as a motion on Tuesday, January 7, 1947, counsel to be allowed oral argument if desired.

[fol. 22] At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the seventh day of January, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, Chief Justice, Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

43539

In the Matter of WILLIAM OLIVER

This matter coming on to be heard is duly submitted on briefs.

[fol. 23] [Stamp:] January Term, 1947. Filed May 16, 1947

STATE OF MICHIGAN, SUPREME COURT

In re: Petition of WILLIAM F. DOHANY for a Writ of Habeas Corpus and Certiorari on behalf of WILLIAM OLIVER

Before the Entire Bench

CARR, C. J.:

On September 11, 1946, and prior thereto, an investigation was being conducted in the county of Oakland by the Hon. George B. Hartrick, one of the circuit judges of said county, pursuant to the provisions of Comp. Laws 1929, § 17217 et seq (Stat. Ann. § 28.943 et seq). The subject matter of such investigation involved alleged violations of the statutes of the State pertaining to gambling, operation of gambling devices, bribery of public officials, and other offenses. On the date referred to William Oliver was summoned before Judge Hartrick and questioned concerning certain matters pertaining to the inquiry. During such examination the other circuit judges of Oakland county, the Hon. Frank L. Doty and Hon. H. Russel Holland, sat with Judge Hartrick in an advisory capacity. At the conclusion of Oliver's testimony the judges unanimously [fol. 24] agreed that false and evasive answers had been given by Oliver in answer to questions. Thereupon Judge Hartrick adjudged Oliver guilty of contempt of court and sentenced him to 60 days in the Oakland county jail.

Following the conviction and sentence a petition was filed in this court on behalf of Oliver, asking for a writ of habeas corpus, with accompanying writ of certiorari, to inquire into the legality of his conviction, sentence and imprisonment. On the filing of said petition the writs were issued, and Oliver, herein referred to for the sake of clarity and brevity as the plaintiff, was released on bail. The matter is before this court on the petition and Judge Hartrick's return.

The return sets forth that, in the course of the investigation referred to, it was called to the attention of the circuit judge, acting as a grand juror, that plaintiff was the owner of certain pin ball machines which were being operated in Oakland county, and which, it was suspected, were being used for gambling purposes; and that plaintiff had pur-

chased from one C. A. Mitchell, doing business as the Midwest Bonding Company, a series of instruments referred to as "bonds," for which plaintiff had paid Mitchell certain sums of money. The return further shows that Oliver was questioned before the grand jury concerning his dealings with Mitchell, and also as to the location of the bonds in [fol. 25] question. The testimony that Judge Hartrick and his associates concluded was false and evasive is as follows:

"Q. Now, in September of 1944 you were approached by a man named Carman A. or Carman E. Mitchell with reference to the purchase of certain bonds which were to cover pin ball machines that were owned and operated by you in the county of Oakland, that is right?

"A. Yes.

"Q. Where are those bonds now?

"A. Well, I destroyed them.

"Q. When?

"A. Well, I don't remember the exact date. I imagine I destroyed it at the end of the year. You know, when going through my papers I didn't see any use for keeping them because they had expired.

"Q. What method did you use to destroy them?

"A. Well, I don't know offhand just what I did do with them, whether I burned them or threw them out. I must have threw them out.

"Q. Did you ever buy any bonds of that kind before?

"A. No.

"Q. Never had any of that kind of bonds in your possession before in your lifetime?

"A. No, I never did.

"Q. You never had an event of that kind occur in all your life did you?

"A. No.

"Q. And you want us now to understand, even in view of the fact that those were the only bonds of this type that you ever owned or handled, you want us to believe that you cannot tell us now what method you employed in destroying them?

"A. I just got rid of them. I imagine I threw them in the waste paper basket. That is what I usually do. I get lots of circulations, papers, things that I have no use whatever for, threw them in the waste paper basket.

"Q. When do you think you threw them away?

"A. Possibly the end of the year, found them in there, run out, expired.

"Q. The closest thing to accuracy that you can give us regarding these bonds, is that you are not sure when you destroyed them, are not sure what method you employed to destroy them?

[fol. 26] "A. The only—I couldn't say what I did do. Probably threw them in the trash can.

"Q. That is as close as you can tell us?

"A. No, no, I don't remember what I did do with them. I can't say positive what I did do with them.

"Q. Where were you when C. A. Mitchell first talked to you about the purchase of these bonds?

"A. Well, to the best of my memory I was in his office.

.

"Q. Who mentioned these bonds first, you or he?

"A. He did.

"Q. What did he tell you about them?

"A. Oh, he just handed me one, told me to look it over.

"Q. Did you look it over?

"A. Yes.

"Q. Did you read it?

"A. Yes.

"Q. What next was said?

"A. Well, he went ahead to explain to me about the bonds, you know, what it was for.

"Q. What did he tell you it was for?

"A. To reimburse the county for any expense, extra expense they had to go to in case the machines, anybody was caught gambling on the machines or anything illegal.

"Q. Your machines are perfectly legal, are they not?

"A. They were, yes.

"Q. Did he tell you who he was going to prevent from using that gambling device?

"A. He didn't tell.

"Q. Didn't you ask? You know, according to the ruling they can be gambled on?

"Q. You know people go in and bet on high scores things like that?

"Q. Did Mitchell mention that to you before you bought them?

"A. Well, he stressed upon if the county had to go to any expense, extra expense, the bonding company would pay the expense.

"Q. Did you consult the prosecuting attorney about it?

"A. No, I didn't.

"Q. You knew the county was involved, did you not?

"A. Well, yes.

[fol. 27] "Q. Didn't you think it was any of the county's business that some stranger was making a contract for the county?

"A. No, I didn't think anything special about it.

"Q. Did you have any conversation with anybody else about these bonds before you bought them?

"A. Yes, I spoke to McNamara about it.

"Q. McNamara is now dead is he not?

"A. Yes.

"Q. Who else?

"A. I spoke to Hartley about it.

"Q. What conversation did you have with Hartley?

"A. Well, I asked him what he thought about it. He said, well, he didn't know. He said McNamara had an attorney and was going to see the prosecutor about them. He said he was going to wait and see what information he got before he did anything.

"Q. You went to Hartley and asked him what he thought?

"A. I went to him or called him up, I don't know which. Anyway I discussed it.

"Q. What protection did you think you were getting out of this transaction?

"A. Well, you know, they just hand down a ruling that the machines in some places are illegal, if they caught them gambling on them, things like that. I figured it would show our good faith, we were trying to run them legitimately.

"Q. How did you think C. A. Mitchell could enforce the law as far as your machines were concerned?

"A. I don't know. He didn't say 'Enforce the law, show our good faith.' We had a little sticker we put on the machines.

"Q. You didn't seek any advice from Mr. Dohany before you parted with your money, or in relation to these bonds, did you?

"A. No."

In the brief filed on behalf of plaintiff it is contended, first, that plaintiff's summary conviction of contempt constituted a denial of due process of law and hence violated [fol. 28] art. 2, § 16, of the State Constitution, and § 1 of the Fourteenth Amendment to the Federal Constitution; second, that due process of law, under both the State and Federal Constitutions, required the filing of charges, notice of hearing to the accused, and a hearing on such charges; third, that contemptuous misbehavior toward a grand jury conducting an investigation under the statutory provisions above cited is not contempt of court. These questions were all raised in the case of *In re* Petition of William F. Dohany for a Writ of Habeas Corpus and Certiorari on behalf of Leo Hartley, — Mich. — (decided April 17, 1947), in which the conviction of Hartley for contempt, committed under circumstances analogous to those in the case at bar, was sustained by an evenly divided court. They were discussed at some length by Justice Dethmers in his opinion, and it is unnecessary to repeat what was there said. The claims made are without merit.

This brings us to the consideration of the question whether, as a matter of fact, plaintiff was guilty of contempt of court. The return of the circuit judge as to the facts must be taken as true. This court does not weigh the testimony but examines it to determine if there is evidence to support the finding. *People v. Doe*, 226 Mich. 5; *In re* Slattery, 310 Mich. 458. An examination of the testimony given by Oliver with reference to his dealings with Mitchell leads to the conclusion that plaintiff sought to withhold his real reason, or reasons, for paying money to Mitchell [fol. 29] chell, ostensibly for the bonds. No copies of these instruments appear in the record in the instant case, but the return of the circuit judge states that he was satisfied, after investigation, that the instruments were the same as those sold by Mitchell to Hartley. It may be noted in this connection that an affidavit, set forth in the record, filed by plaintiff in support of a motion for a more complete return, sets forth that said plaintiff in his testimony before the grand

jury identified a duplicate of a bond purchased by him from Mitchell. It thus appears that there was testimony before the grand jury with reference to the form of the bonds that plaintiff received from Mitchell. A copy of a bond in the Hartley case, *supra*, is set forth in the opinion of Justice Dethmers therein.

Plaintiff testified that he read one of the bonds, received by him from Mitchell, but his answers to questions as to why he had purchased them, and what protection he thought he was receiving through them, were vague and uncertain. The grand juror and his associates were fully justified in concluding that Oliver was intentionally evasive. He offered no plausible reason whatsoever for the payments made by him to Mitchell. What was said by Justice Dethmers in the Hartley case, *supra*, with reference to testimony of Hartley, may well be applied to the statements of Oliver. It is apparent that for some reason he did not wish to disclose to the grand juror the precise nature of his dealings with Mitchell. His evasive replies clearly tended to obstruct the investigation and were in consequence contemptuous in character. It is scarcely conceivable that plaintiff did not know the real reason why he took these so-called bonds from Mitchell, and paid money to the latter.

Judge Hartrick and his associates also concluded that Oliver's answers to questions relating to his disposition of the bonds were likewise false and evasive. He first claimed that he destroyed the instruments, but in answer to further questions was unable to tell when or where or by what means he did so, and finally concluded by stating that he did not remember what he did with them. Concededly, however, the instruments were of an entirely different character than any that he had ever previously possessed. If, as he at one time suggested in his testimony, he wanted to show his "good faith" in the operation of his machines, it is a reasonable inference that he would have preserved the so-called bonds.

The circuit judges had the advantage of hearing plaintiff's testimony and of noting his demeanor in giving it. The conclusion reached finds support in the record. An order will accordingly enter dismissing the petition and remanding plaintiff to the custody of the sheriff of Oakland

county for service of his sentence in accordance with the order of the circuit judge.

Signed: Leland W. Carr, C. J., Edward M. Sharpe, John R. Dethmers, George E. Bushnell, JJ.

Endorsed: Filed May 16th, 1947. Jay Mertz, Clerk Supreme Court.

[fol. 31] STATE OF MICHIGAN SUPREME COURT

In re: Petition of WILLIAM F. DOHANY for a Writ of Habeas Corpus and Certiorari on behalf of WILLIAM OLIVER.

Before the entire bench:

NORTH, J.:

WILLIAM OLIVER, herein designated as plaintiff, in September 1946, after testifying in a so-called one-man grand jury proceedings conducted by Honorable George B. Hartwick, one of the Oakland county circuit judges, was committed under a sixty-day sentence for contempt of court. On plaintiff's petition we issued writs of habeas corpus and certiorari, that we might review and test the validity of his commitment. Pending the appeal he was released on giving bond. The case has been submitted to this Court, and Chief Justice Carr has written for affirmance of the sentence imposed. For reasons hereinafter noted, I am unable to concur in that result.

The proceedings incident to the hearing before the grand juror, including questions propounded to and answers made by plaintiff, adequately appear in the opinion of the Chief Justice, and therefore are not herein repeated. From that opinion, and also from the record, it clearly appears that the asserted justification for finding plaintiff guilty of contempt was, as stated by the Chief Justice, "that false and evasive answers had been given by Oliver in answer to questions." Hence the scope of our review is this: Is there any competent evidence in the record in support of the finding below that when plaintiff was testifying he gave answers which were (1) evasive or (2) false?

[fol. 32] As noted above, the testimony quoted in my Brother's opinion discloses all there is in the record bearing upon the issue as to whether any of plaintiff's answers

were evasive. A careful reading of that testimony fails to disclose a single evasive answer, especially when read in connection with the whole of the quoted testimony. Instead each answer was courteous and responsive. It is true that plaintiff was not able to give positive and definite answers to some of the questions. But that circumstance must be viewed in the light of the subject matter of the examination. So far as it was relevant or material, the examination pertained to plaintiff's conversations with one Mitchell through whom plaintiff had purchased so-called bonds * incident to the operation of various pinball machines in different localities; and to the reason why plaintiff bought the so-called bonds, also the manner in which plaintiff disposed of the bonds after they had expired by their own terms. It is important to note that the bonds were purchased in September 1944, but plaintiff's testimony involved herein was not given until two years later, September 1946. Is it at all strange that when testifying in 1946 plaintiff could not give a verbatim or detailed statement of quite commonplace conversations which occurred between him and Mitchell in 1944? Again it was a year after the bonds had expired when plaintiff was interrogated as to what disposition he had made of the then worthless papers. There is no dispute or conflict in the testimony that plaintiff destroyed the bonds or threw them out as waste paper. Can it be said that a witness who is unable to testify definitely as to how he disposed of, for example, an automobile policy that had expired a year pre-[fol. 33] viously is thereby shown to be evasive in his testimony or that he is guilty of giving false testimony? If so, many an honest person would hazard being headed for jail whenever summoned as a witness.

So far as appears from the record quoted in my Brother's opinion, plaintiff's testimony as to his reason for purchasing the bonds is true and plausible. Nothing in the record contradicts those answers. The record affords no ground for finding them either false or evasive. Perchance the testimony of this witness was not what the examining grand juror had expected the witness would give, but neither that circumstance nor anything disclosed by this record indicates evasiveness by plaintiff as to conversations with Mitchell

* For copy of bond see In re Leo Hartley, — Mich. —.

or his reasons for purchasing the bonds. Such a record does not justify punishment for contempt.

Likewise as to the charge that plaintiff Oliver gave false testimony and was imprisoned therefore, a diligent review of the record fails to disclose a justification. The return of Judge Hartrick to our writ of certiorari wholly fails to specify any particular answer or answers in plaintiff's testimony that are shown by anything in the record to be false. Instead the return quotes plaintiff's testimony at length, the substance of which is embodied in the opinion herein of the Chief Justice. The return leaves it to this reviewing Court to guess which of plaintiff's answers were, in the opinion of the circuit judge, false. Such a return is not adequate nor is it fair to the person charged. Both he and we are entitled to be specifically informed of the claimed falsity, so that the issue may be accurately reviewed by this Court and so that plaintiff may purge himself of the contempt, if he finds occasion so to do. At no time has the circuit judge informed plaintiff (or this Court) of the precise portion of plaintiff's testimony that was deemed to be [fol. 34] false. Instead at the close of plaintiff's examination the judge merely announced: "Because the story (plaintiff's testimony) doesn't, if you want it put in language you understand, doesn't jell * * * I don't think any one person who reads your testimony, reads this record, could believe this story." The character of the return in the instant case quite clearly discloses a lack of justification for punishment of plaintiff on the ground that he gave false testimony.

In a case of this character the record is fatally defective as to the charge of falsifying, unless it contains other facts or circumstances which reveal falsity or unless the testimony of the witness intrinsically discloses falsity. It is not sufficient that a judge may have knowledge *dehors* the record which might justify the conclusion that the witness gave false testimony. That is the fatal defect in the instant record as to this phase of the case. On the record before us there is no justification for concluding that plaintiff's answers or any of them were false as against the opposite conclusion—i. e., that his answers were true. Hence the circuit judge's conclusion as to falsity is without justification in this record, and plaintiff should not have been committed for contempt on the ground of assumed falsification. If the circuit judge had a suspicion that plaintiff was testify-

ing falsely, he might well have done as the court did in *State v. Meese*, 200 Wis. 454, 463, where it is stated:

"The court, however, was suspicious that the witness was not telling the truth, and on his own motion subpoenaed witnesses and ordered production of books and papers to determine the truth or falsity of the defendant's testimony. He found that the defendant did not testify truthfully, and that because thereof he had obstructed justice."

Had the above practice been pursued in the instant case a record might or might not have been made which would [fol. 35] have disclosed justification for a contempt commitment. But on the record before us a determination in accord with that of the circuit judge would be based on pure guess or merest conjecture. Such a record does not justify punishment for contempt of court on the grounds asserted in the instant case, in which the record is not at all comparable to that in *re Slatterly*, 310 Mich. 458. The distinction is sufficiently pointed out in the opinion of Mr. Justice Boyles in *re Petition of Leo Hartley*, — Mich. — (decided April 17, 1947).

"On certiorari the Supreme Court reviews questions of law and determines only whether there was evidence of any facts which justify findings of the trial judge." (Syllabus) *In re Gilliland*, 284 Mich. 604. Contempt proceedings are criminal in their nature rather than civil. *Riegler v. Kalamazoo Circuit Judge*, 222 Mich. 421, citing *Carnahan v. Carnahan*, 143 Mich. 390. It is said in *re D. Levy & Co.*, 142 Fed. 442 (C. C. A., Second Circuit):

"We are not unmindful of the general rule that the power to imprison for contempt in such cases should be exercised with great caution, and only upon proof which establishes the facts found beyond a reasonable doubt, or which must, in any event, be clear and convincing."

The Supreme Court of Wisconsin has said:

"The power to punish for contempt is to be used but sparingly. It should not be used arbitrarily, capriciously, or oppressively." *State v. Meese*, 200 Wis. 454, 458.

In *United States v. Moore*, 294 Fed. 852 (C. C. A., Second Circuit) a headnote reads:

"The power to punish for contempt, being far-reaching and drastic should always be exercised cautiously, and with due regard to constitutional rights."

On the record before us, which does not contain testimony by plaintiff which was evasive or which showed he falsified, our conclusion is that plaintiff was unjustly committed for [fol. 36] contempt of court; and for that reason the judgment entered in the circuit court is vacated and plaintiff's bond released.

Signed: Walter H. North, Henry M. Butzel, Neil E. Reid, Emerson R. Boyles, JJ.

Endorsed: Filed May 16th, 1947. Jay Mertz, Clerk Supreme Court.

[fol. 37] At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the sixteenth day of May, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, Chief Justice, Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

43539

In the Matter of WILLIAM OLIVER

This matter coming on to be heard on habeas corpus and ancillary certiorari heretofore issued herein, and due consideration thereof having been had by the Court, It is ordered that the writs stand dismissed.

[fol. 38] SUPREME COURT OF THE STATE OF MICHIGAN

43539

In the Matter of WILLIAM OLIVER

IN THE SUPREME COURT, SS:

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record, and of all the proceedings had and determined in the above entitled cause by said Supreme Court, including the written decision and reasons therefor, signed by the Justices of said Court and file in my office, as appears of record and on file in said cause; that I have compared the same with the original and that it is a true transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at the City of Lansing, this nineteenth day of June, in the year of our Lord, one thousand nine hundred and forty-seven.

Jay Mertz, Clerk. (Seal.)

[fol. 39] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Michigan is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.